

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARK WILLIAMS BANION,

Defendant-Appellee.

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UNPUBLISHED

October 15, 2009

No. 291383

Wayne Circuit Court

LC No. 08-019709-FC

Before: Saad, C.J., and O’Connell, and Zahra, JJ.

PER CURIAM.

The prosecutor appeals by leave granted an order suppressing defendant’s statements. Defendant faces three counts of criminal sexual conduct (person less than 13 years old), MCL 750.520b(1)(a). We reverse.

The prosecution argues that the trial judge erred by concluding that defendant’s statement of “I think I’d like to talk to an attorney,” during a police, custodial interrogation, was an unequivocal request for an attorney. After defendant made the above statement, the police officer conducting the interview replied:

You can do what you need to do, but it’s not going to be any better, at that point, alright. It’s on you. You’ve got a right to an attorney, and you can have your attorney. That’s fine. But, uh, I’m telling you that’s going to make a big difference, and that’s not going to come out. A mistake was made. We all make mistakes. I understand that. So what are you saying?

Defendant then stated, “I did something foolish,” and eventually admitted to the commission of unlawful acts.

This Court reviews a trial court’s ruling on a motion to suppress de novo and its factual findings for clear error. *People v Mullen*, 282 Mich App 14, 21; 762 NW2d 170 (2008). The application of a constitutional standard to uncontested facts is reviewed de novo as well. *Id.*

A defendant has a constitutional right to counsel during custodial interrogation. *Miranda v Arizona*, 384 US 436, 471; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Tierney*, 266 Mich App 687, 710; 703 NW2d 204 (2005). “When a defendant invokes his right to counsel, the police must terminate their interrogation immediately and may not resume questioning until such

counsel arrives.” *Tierney, supra* at 710-711 (citing *Edwards v Arizona*, 451 US 477, 482; 101 S Ct 1880; 68 L Ed 2d 378 (1981)). However, such invocation must be unequivocal. *Tierney, supra* at 711. The analysis into whether a statement was unequivocal is an objective one. *Davis v US*, 512 US 452, 458-459; 114 S Ct 2350; 129 L Ed 2d 362 (1994). If a suspect makes a statement regarding an attorney that is ambiguous or equivocal, the police do not have to cease questioning. *Id.* at 459.

In *Davis*, the Supreme Court held that the statement, “Maybe I should talk to a lawyer,” was ambiguous and, therefore, not sufficient to invoke the defendant’s right to counsel. *Id.* at 462. In *Tierney, supra*, this Court concluded that “Maybe I should talk to an attorney,” and “I might want to talk to an attorney” were nearly identical to the statement made in *Davis* and likewise held that they were equivocal. *Tierney, supra* at 711. Similarly, this Court also found the statement, “I’m ah need that cause I can’t afford none” as being a future desire for an attorney instead of a present, unequivocal request for an attorney. *People v Granderson*, 212 Mich App 673, 676-677; 538 NW2d 471 (1995).

The language at issue in the present case, “I think I’d like to talk to an attorney,” is ambiguous or equivocal as well. Even though there are no words of condition, such as “might” or “maybe,” the use of the word “think” introduces an ambiguous quality. See *Clark v Murphy*, 331 F3d 1062, 1070 (CA 9, 2003). In fact, in *Clark*, the Ninth Circuit addressed a statement, “I think I would like to talk to a lawyer,” which is virtually identical to the language at issue here, and concluded that it was equivocal. *Id.* at 1070-1071. Likewise, the Fourth Circuit considered similar language, “I think I need a lawyer,” and held it was insufficient to invoke the right to counsel because it was analogous to the statement in *Davis*. *Burket v Angelone*, 208 F3d 172, 198 (CA 4, 2000).

An ambiguous statement is one that is “open to or having several possible meanings or interpretations.” *Random House Webster’s College Dictionary* (1997), p 41. Likewise, an equivocal statement is one that allows for “the possibility of more than one meaning or interpretation.” *Id.* at 442. Here, defendant’s statement could reasonably be interpreted as meaning that defendant was merely thinking or considering talking to an attorney, or it could also mean that defendant was actually requesting to see an attorney. Given the dual nature of defendant’s statement, it exemplifies ambiguity. Thus, an objective analysis of defendant’s statement leads to the conclusion that it was, indeed, ambiguous and equivocal, which is consistent with the other persuasive cases cited.

Therefore, defendant’s statement to police was objectively equivocal. The use of the word “think” in this context is sufficient to add this ambiguous characteristic. Being an ambiguous statement, the police were under no obligation to cease questioning, and defendant’s subsequent admission was not illegally obtained. *Id.* at 459.

Reversed.

/s/ Henry Willaim Saad  
/s/ Peter D. O’Connell  
/s/ Brian K. Zahra